

**BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C.**

In the Matter of	)	
	)	CC Docket No. 02-53
Presubscribed Interexchange Carrier	)	CCB/CPD File No. 0112
Charges.	)	RM 10131

**REPLY COMMENTS  
OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER  
ADVOCATES**

In initial comments, the National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> supported the immediate reduction of the presubscribed interexchange carrier (“PIC”) change charge safe harbor to \$3.00, with the Commission ordering local exchange carriers (“LECs”) to provide additional cost justification for company-specific charges. NASUCA’s position was based on the lack of cost justification for the long-standing \$5.00 PIC change charge safe harbor. The initial

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<sup>1</sup> NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

comments were filed in response to the Federal Communications Commission's ("Commission's") Further Notice of Proposed Rulemaking.<sup>2</sup>

NASUCA now replies to various of the industry comments submitted in response to the FNPRM.<sup>3</sup> NASUCA's failure to address here any specific comment should not be deemed to be acquiescence in the substance of that comment.

Two years ago in the Notice of Proposed Rulemaking, the Commission stated:

The current safe harbor was established based on the difficulty of assessing actual costs by carrier for this service, what was known generally about the costs of providing this service, and a determination that it was good public policy to discourage excessive switching of carriers. All three of these factors are now ripe for reexamination.<sup>4</sup>

The reexamination based on the record to date should lead to the result NASUCA recommends.<sup>5</sup>

To begin, as the Commission well knows, the entire telecommunications industry has far more acquaintance with assessing costs of services and facilities today than twenty years ago. This includes specifically the costs of changing a customer's PIC. Thus the first two points of the Commission's rationale for establishing the safe harbor no longer apply.

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<sup>2</sup> Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445 (2004) ("FNPRM").

<sup>3</sup> Comments were filed by NASUCA and by ACUTA: The Association for Communications Technology Professionals in Higher Education ("ACUTA"); AT&T Corp. ("AT&T"); BellSouth Corporation ("BellSouth"); Cincinnati Bell Telephone Company ("CBT"); MCI, Inc. ("MCI"); National Exchange Carrier Association, National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("NECA, et al."); New Jersey Division of Ratepayer Advocate; SBC Communications ("SBC"); Sprint Corporation ("Sprint"); and Verizon.

<sup>4</sup> Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002) ("NPRM"), ¶ 8 (footnote omitted).

<sup>5</sup> Indeed, the Commission should consider seriously AT&T's criticisms of the rationale for having a PIC change charge safe harbor. AT&T at 2-3.

Indeed, the limited cost information submitted by SBC and Verizon in their comments demonstrates that there remains little justification for a “safe harbor.” If there is to be a safe harbor, it should be set low. Thus NASUCA continues to recommend a \$3.00 safe harbor.

Finally, if one were to examine today the public policy implications of PIC change charges, “discouraging excessive switching” would scarcely be at the top of the list. Indeed, today it should be the Commission’s task to make switching carriers as easy as possible for consumers. Carriers should continue to be incented to develop more efficient processes. On the other hand, customers have a right to expect that carriers will provide a reasonable level of protection against being switched without the customer’s permission. Consumers should not have to pay an additional fee for this fundamental service, whether it be anti-slamming measures or PIC freezes.

These factors taken together, and considering other parties’ comments, lead NASUCA to reaffirm its position that the costs of slamming and of PIC freezes should not be recovered from customers through the PIC change charge.<sup>6</sup> Indeed, all of these costs – including the costs of PIC changes themselves – are most appropriately recovered from carriers, not end-use customers.<sup>7</sup> Even if the customer submits the change request, the carrier will benefit from the change and can reasonably be expected to pay the charge.

Much of the controversy in the NPRM arose from the fact that BellSouth charged \$1.49 for its presubscribed interexchange carrier (“PIC”) change charge, based on a cost

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<sup>6</sup> See ACUTA at 3.

<sup>7</sup> Id. AT&T’s argument that permitting these charges to be assessed directly against carriers will decrease the ILECs’ incentive to improve the efficiency of the PIC change process (AT&T at 8) ignores the substantial power IXC’s have against ILECs and overlooks the *lack* of power possessed by an individual consumer.

study that called into question the Commission's \$5.00 safe harbor. BellSouth's more recent cost study purporting to show that its costs for a PIC change charges are now \$3.07 also calls the \$5.00 safe harbor into question.

Based on the initial comments to the NPRM, BellSouth was unique among incumbent LECs ("ILECs") in basing its charge on a cost study.<sup>8</sup> As NASUCA noted in reply comments in that first round, none of the other large ILECs had submitted cost studies, even in the face of this Commission inquiry.<sup>9</sup> That remains true, with one exception, Verizon, as discussed below. SBC has not submitted a cost study, but has criticized some of the inputs to BellSouth's study, and provided its own inputs.<sup>10</sup> On the whole, then, CBT's assertion that the current universal PIC-change charge is "cost-based"<sup>11</sup> is puffery at best.

Verizon presented a detailed cost study.<sup>12</sup> This is not the place for a detailed discussion of the merits -- or lack thereof -- of Verizon's or BellSouth's cost studies, or of SBC's comparison of its inputs with those included in the BellSouth study.<sup>13</sup> Rather, the disparities among these studies show that it no longer makes sense to have a safe harbor. As a prime example, the common cost or overhead loading factors vary dramatically: BellSouth's factor was 1.0497; SBC's factors range from 1.21 to as high as

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<sup>8</sup> BellSouth's assertion (at 1) of the time and expense of conducting this cost study strains credulity.

<sup>9</sup> NASUCA Reply Comments (filed July 1, 2002) at 4-8.

<sup>10</sup> SBC at 4-5.

<sup>11</sup> CBT at 2.

<sup>12</sup> Verizon Attachment b.

<sup>13</sup> NASUCA would note, however, that Verizon explicitly includes costs for PIC freezes and slamming into its calculation of the cost of PIC changes. As discussed below, this is inappropriate.

1.81<sup>14</sup>; and Verizon's factors are 1.4591 and 1.4763.<sup>15</sup> As another example, BellSouth's labor rate is \$30.95; SBC asserts that its labor rate is \$57.00;<sup>16</sup> and Verizon claims a labor rate of \$42.00 per hour.<sup>17</sup> Although one could question the accuracy of any of these figures, the more important reaction to these disparities calls the existence of the \$5.00 safe harbor into question.

CBT says that the Commission should retain the current \$5.00 safe harbor, but allow ILECs to file cost studies to support a higher charge.<sup>18</sup> Yet CBT disclaims the use of the BellSouth cost study to set the PIC-change safe harbor.<sup>19</sup> Based on the record here, there is no reason for calling the \$5.00 charge "cost-based."<sup>20</sup> At this point, the burden should be on the ILECs to justify any charge, not to mention the \$5.00 safe harbor.<sup>21</sup>

In the FNPRM, the Commission focused on the fact that BellSouth's most-recent cost study shows a substantial difference between the costs of manual and electronic processing.<sup>22</sup> Most of the industry opposes having two separate charges for end users

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<sup>14</sup> SBC at 5, n.12.

<sup>15</sup> See Verizon Attachment B, Exhibit Verizon East PIC Cost, Workpaper 1.1; id., Exhibit Verizon West PIC Cost, Workpaper 1.1

<sup>16</sup> SBC at 5.

<sup>17</sup> See Verizon Attachment B, Exhibit Verizon East PIC Cost, Workpaper 1.1.

<sup>18</sup> CBT at 5.

<sup>19</sup> Id.

<sup>20</sup> Verizon calls the current charge "cost-related." Verizon at 2. The relationship appears to be a distant one.

<sup>21</sup> NASUCA understands the concerns of NECA, et al. that smaller carriers have higher costs and are more likely to process orders manually. The Commission should consider whether to keep the \$5.00 charge for rural carriers (as defined in 47 U.S.C. § 153(37)). By no means, however, should the \$5.00 charge be retained for the so-called "2%" carriers such as CBT.

<sup>22</sup> FNPRM, ¶ 4.

based on those differentials.<sup>23</sup> And the views of those who favor having different charges actually support having different charges imposed on carriers, not consumers.<sup>24</sup> AT&T's argument that the charges should be based on forward-looking costs<sup>25</sup> makes most sense for a carrier-to-carrier charge.

The use of forward-looking carrier-to-carrier charges would give all the carriers the proper incentives to minimize their costs.<sup>26</sup> By contrast, as the Commission noted, the fact that the PIC change charge is assessed on end users removes IXC incentives to force ILECs to reduce the costs of PIC changes.<sup>27</sup>

Some members of the industry seek to recover a broad range of costs through the PIC change charge, most of which are not costs of changing a customer's IXC. The carriers would include the costs of PIC freezes<sup>28</sup> and slamming<sup>29</sup> from the charge imposed when a customer changes carriers. ACUTA sets forth the rationale for why carriers should internalize PIC freeze costs:

[C]arriers provide PIC freeze service to protect their own interests as much as the interests of customers. The prevention of unauthorized changes of long distance carrier helps to prevent complaints to regulatory

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<sup>23</sup> ACUTA at 2; BellSouth at 4-5; CBT at 3; Sprint at 2.

<sup>24</sup> MCI at 2. MCI's explanation (at 5-6) of the disclosures that would need to be made with a two-tier charge structure actually points up the ineffectiveness of the choice: Will many customers hang up and call back if informed that the call-back will save them \$2.83 (id. at 2)? (And one wonders where the costs of these interrupted PIC change processing calls will be loaded.)

<sup>25</sup> AT&T at 4-5.

<sup>26</sup> MCI at 6.

<sup>27</sup> FNPRM, ¶ 5. MCI's claim (at 9) that IXCs have automated their processes thus misses the point.

<sup>28</sup> See, e.g., Sprint at 4; Verizon at 1.

<sup>29</sup> Sprint at 4; Verizon at 1.

agencies, and saves carriers considerable staff time and administrative workload in researching and resolving customer complaints.<sup>30</sup>

Further, MCI persuasively argues for excluding the costs of third-party verification from the PIC-change charge.<sup>31</sup> SBC posits that “if LECs are precluded from recovering certain costs, such as PIC freeze costs, LECs could be forced to discontinue PIC freezes and other consumer-related activity....”<sup>32</sup> Forbidding LECs from recovering PIC freeze costs through the PIC change charge does not, of course, preclude them from recovering those costs.

### **Conclusion**

The Commission should immediately lower the PIC change charge safe harbor to \$3.00, and should require all carriers to file cost information on their PIC change costs. The Commission should also forbid carriers from including PIC freeze and “other consumer-related activity” costs in their PIC change charges.

Respectfully submitted,

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<sup>30</sup> ACUTA at 4; see also AT&T at 7, MCI at 4, 7. MCI's assertion that there should be a separate end user charge for PIC freezes (id. at 8) underscores the iniquity of requiring customers to pay extra to prevent unauthorized switches.

<sup>31</sup> MCI at 3-4.

<sup>32</sup> SBC at 2.

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